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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON-SEATTLE

8 UNITED STATES OF AMERICA,)

9 Plaintiff,)

10 v.)

11 DAVID ROUTE,)

12 Defendant.)
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No. CR17-302 RSM

DEFENDANT'S SENTENCING
MEMORANDUM AND MOTION TO
DEPART FROM GUIDELINES

14 **I. INTRODUCTION.**

15 David Route, by and through his attorney, submits this Sentencing Memorandum for
16 his conviction by guilty plea to Felon in Possession of a Firearm.

17 The defense is moving the Court to depart downward from the arguably applicable
18 sentencing guidelines range, and asking that the Court impose a sentence of 60 months
19 imprisonment. The defense believes that sentence is within the applicable sentencing
20 guidelines range. Mr. Route has been in custody since July 3, 2017.
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22 The requested sentence is supported by Mr. Route's individual circumstances and
23 history. This includes his mental health diagnoses, Post-Traumatic Stress Disorder and
24 Depression. Mr. Route has also demonstrated in the past 9 months that he is committed to
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1 utilizing the tools and programs available during incarceration to better equip himself for a
2 future outside of prison. For the Court's consideration are the following materials:

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4 Appendix A – Letter from Mr. Route to the Court;

5 Appendix B – Letters from Mr. Route's brother and a friend; additional letters should
6 be provided prior to sentencing;

7 Appendix C – A BOP Work Performance Evaluation for Mr. Route's job at FDC;

8 Appendix D – Certificates for Mr. Route's completion of multiple modules of
9 "Turning Point" program offered to inmates;

10 Appendix E – Certificate and journal entries for "21 day Days of Gratitude"
11 Challenge;

12 Appendix F – Psychological evaluation (filed under seal separately)

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14 **II. PERSONAL HISTORY.**

15 David Route is 33 years old. He is a native of Seattle, and has spent his entire life
16 living in Seattle, or incarcerated. He has two older siblings, and three younger siblings. His
17 oldest sibling, Cedric Brooks, has written a letter to the Court. Mr. Brooks is not in prison,
18 and has not been for quite some time. He is working at Grease Monkey and residing in the
19 community.

20 David's life growing up was not stable, with his father, David Route, drifting in and
21 out of David's life, as drug addiction kept him from being a role model or steadying
22 influence. David's mother, Martha Brooks, was the only real consistent source of support and
23 encouragement. But she too struggled with alcoholism and compulsive gambling. Ms.
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1 Brooks died in 2012 while Mr. Route was in prison. His mother's death, and his separation
2 from her at the time, was devastating to David.

3 Mr. Route has a daughter with Darlynn Miles, and has been involved in his child's
4 life. He missed much of her early childhood due to imprisonment.

5 Mr. Route struggled in school due to learning disabilities, and what one evaluator saw
6 as likely undiagnosed ADHD. His unstable home life left David unsupervised for much of his
7 childhood, and he eventually came under the influence of criminal actors who offered the
8 support and belonging that was missing at home. His criminal history, which starts at age 13,
9 is reflective of someone who is taking their cues from role models who sell drugs on the
10 street. It reflects a young person who was not psychologically or intellectually equipped for
11 success in school, and who slipped away from the stabilizing influences of school and
12 organized sports. A series of drug-related arrests and short stints in jail and prison culminated
13 with his federal prosecution and conviction in 2009, when he was still just 22 years old.
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15 **III. THE GOVERNMENT and PROBATION RECOMMENDATIONS**

16 The Government is recommending that the Court impose a sentence of ten years.
17 United States Probation is recommending a sentence of just over 9 years. Both
18 recommendations, justifiably, look to Mr. Route's criminal history and conduct as
19 justification for sentences either above the applicable guideline range, or at the very high end.
20 They are sentencing recommendations focused on removing Mr. Route from society, with
21 much less consideration of his recent conduct, and the signs that Mr. Route is not a lost cause.
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23 **IV. GUIDELINE CALCULATION**

24 The defense agrees with portions of both the Government and U.S. Probation's
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1 Guideline calculations. The defense agrees the Base Offense Level should 20, as found by
2 U.S. Probation. The defense likewise agrees that Mr. Route receives a 2 point increase
3 because the firearm was stolen.

4 The defense does not agree with the application of Guidelines section 2K2.1(b)(6)(B)
5 to the facts in this case. This case presents a unique factual setting – there is no evidence of
6 Mr. Route selling or distributing drugs to anyone. Instead, Mr. Route was working a
7 legitimate job and, while engaged in that job, had an interaction with another African-
8 American man that drew the attention of a citizen who decided to summon law enforcement.
9 That interaction was solely in relation to a handgun, not drugs. While the firearm found in
10 Mr. Route’s tow truck was in the same car as the marijuana and recreational drugs, there is no
11 nexus or relationship between the drugs, and any felony possession of those drugs, and the
12 firearm.

13 That defense therefore contends the Court should find a total offense level of 22. Mr.
14 Route’s letter to the Court and his guilty plea should result in a 3 point reduction for
15 Acceptance of Responsibility. That leaves a total offense level of 19. The defense agrees the
16 Criminal History Level is V. Which results in an applicable Guideline range of 57-71
17 months.
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19 **V. BASIS FOR REQUESTED SENTENCE**

20 **A. Mr. Route is Not a Lost Cause.**

21 This is not a case where promises of change or a deep dive into the ineffectiveness of
22 long-term incarceration need to be pushed in front of the Court. Your Honor has had Mr.
23 Route before you previously, and are as familiar with him as any of the other participants, be
24 that the Government, U.S. Probation, or undersigned counsel. But this is a case where
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1 looking for signs of change, and of progress, can bring optimism for Mr. Route's future. And
2 a pathway that does not have to involve overly lengthy incarceration.

3 With this memorandum the defendant is presenting his letter to the Court, and
4 documentation of the hard work towards change he has put in during his time at the FDC.
5 Staff notes show their impression – “Has really turned around”; “Keeps cohesion within the
6 orderlies and the unit”; and “I’ve noticed a big change in you!”. Words not of some family or
7 friend, attempting to persuade a judge to give less time. No, these are the words of
8 professionals who work every day with inmates, and can differentiate between manipulation,
9 and real change.

10 Mr. Route understands that he has placed himself in a position where a judge would be
11 justified in imposing a sentence like that requested by the Government and Probation. And
12 while his letter to the Court demonstrates insight, and commitment to change, it is actions, not
13 words, that demonstrate that his commitment is genuine, and his potential to be a productive
14 member of society is real as well. The materials showing the work he has done while
15 incarcerated are reflective of someone who is doing the hard work needed to change.
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17 Mr. Route is someone who suffers from genuine mental health conditions. Some
18 likely he had since birth, and others, like Post-traumatic Stress Disorder, have been the result
19 of being the victim of a violent crime, and seeing a friend killed in that same incident. His
20 chemical dependency is clear, and not surprising given that both of his parents are or were
21 addicts. His personal history, and mental health make-up, are such that his evolution and
22 growth into a productive, law-abiding citizen was always going to be a long term project. His
23 conduct after his last imprisonment provides a good view of the dichotomy he presents.
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1 Mr. Route availed himself of schooling and programming in the community while on
2 supervised release. That is how he secured good employment as a tow truck driver. But at
3 the same time he accesses opportunity, his life experience and mental conditions convince
4 him that danger remains close at hand, and the rules of law bend to the rules of the street.
5 Given his criminal history, and intellectual limitations, his success in maintaining
6 employment and becoming a trusted employee were really remarkable. It provides an
7 indication that Mr. Route has redeemable qualities that will serve him well in the future.

8 It is this positive and responsible David Route who has emerged again in the past
9 months at the FDC. The incident involving the possession of a weapon back in February is a
10 clear example of Mr. Route allowing his fears and insecurities, both real and imagined, to
11 motivate his conduct. The question in this sentencing is what is the most effective sentence
12 to foster the positive momentum Mr. Route has generated.

13 Mr. Route is still a young man. There is no sentence that could be imposed in this
14 case which would keep in prison for life. So what is to be gained by the Government's 10
15 year recommendation, that would not be achieved through a shorter sentence? The answer is
16 nothing. And what could be lost? That is nearly incalculable.

17 The Government argues that Mr. Route has been given opportunities to change his
18 conduct, and avoid subjecting himself to criminal sanctions. That is an obvious truth. But
19 just as obvious is that Mr. Route came of age in an environment where criminal activity was
20 not just a norm, it was woven into the very fabric of his existence.

21 There are many stories and anecdotes of individuals who live in that same
22 environment, and overcome it to achieve great things, and avoid criminal conduct. But those
23 stories are exceptional for a reason – it is far more common, and more consistent with the
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1 human condition, to adopt the ways of family members and peer groups. For someone who
2 struggles in school because of intellectual limitations, as Mr. Route did, the chances for
3 change and success become even more limited. But he has demonstrated that when he works
4 hard, and commits himself to change and succeed, he can do it. That he has failed on
5 previous attempts speaks to the difficulty of the task, not some irreversible failure on his part.

6 The defense is asking the Court to impose a punitive sentence – five years in prison is
7 a long time. But the defense is asking for something less punitive than the Government and
8 probation because there is somewhere in a criminal sentence being served where growth and
9 change lose momentum. Hopelessness takes over, and the surrender to anti-social and illegal
10 activities becomes easier than continuing to work.

11 **B. The Defense Request is Consistent With Similar Cases.**

12 The sentence requested by the defense is consistent with sentences imposed in this
13 district in cases involving unlawful possession of a firearm. Attached as Appendix F are
14 recent cases in this district, where the conduct of the defendants were arguably much worse
15 than what Mr. Route has done in this case.

16 While it is a small positive for Mr. Route, it is also true that his conduct was not
17 violent, and was not part of some larger criminal enterprise. It was on the one hand an effort
18 to do a favor for a friend, and on the other a reflection of a continued reliance on the rules of
19 the street, rather than the rules of the law. The totality of the circumstances in the case
20 support imposition of a five year sentence.
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2 **VI. CONCLUSION**

3 The defendant respectfully requests that the Court impose a sentence of 18 months
4 imprisonment.

5 DATED this 4th day of November, 2018.

6 Respectfully submitted,

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8 s/Jeffrey L. Kradel
9 WSBA No. 26767
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17 **CERTIFICATE OF SERVICE**

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19 I hereby certify that on October 20, 2017, I electronically filed the foregoing with the
20 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
21 following:

22 AUSA Carl Colasurdo

23
24 /s Jeffrey Kradel